



PATENT
Docket No.: 016845-000300US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Paul Chang et al.

Application No.: 09/215,421

Filed: December 18, 1998

For: TELECOMMUNICATIONS
TRANSMISSION TEST SET

Examiner: W.C. Schultz

Art Unit: 2664

DECLARATION OF PAUL MARSHALL

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Technology Center 2600

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Paul Marshall, hereby declare as follows:

I am presently Chief Operating Officer, Vice President of Marketing and Acting Chief Financial Officer of Sunrise Telecom Incorporated ("Sunrise"), the assignee of the present application. In mid-1997, I was the Vice President of Marketing and Chief Financial Officer. In connection with my duties, I met with potential customers between January 1997 and August 1997 regarding their current and future test equipment needs.

In those meetings, I showed preliminary specification sheets concerning products that Sunrise was currently in the process of developing. Exhibit A is a copy of a preliminary specification sheet for the SunSetTM ADSL test set, dated April 1997. Exhibit B is a copy of a preliminary specification sheet for the SunSetTM xDSL test set, dated July 1997. Exhibit C is a copy of a preliminary specification sheet for the SunSetTM xDSL test set, dated August 1997. It is my understanding that these preliminary specification sheets are related to embodiments of the invention as set forth in the present application.

The purpose of the meetings was to obtain feedback from potential customers regarding their current and future test equipment needs. The preliminary sheets were used to assess interest in the preliminary specifications and to elicit suggestions regarding additional features that the potential customer may want to see. As the product was still under development, the additional features could have been added to the product more easily than if the product development cycle had been completed.

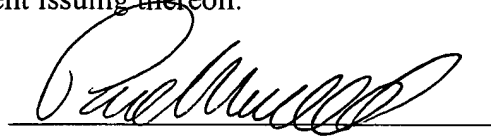
The meetings were private. There was a business custom that any matters discussed in the meetings were to be considered confidential, proprietary, and not to be publicly disclosed. I believed then and believe now that such business custom was in effect. I would not have conducted the meetings had I not believed that they did not also adhere to such business custom.

These sheets are marked "preliminary" and that the specifications are "subject to change without notice". A comparison between sheets shows that the preliminary specifications did change from one sheet to another. The sheet dated August 1997 (Exhibit C) includes handwritten notes detailing additional changes. These changes resulted from the continued development of the products related to the preliminary specification sheets.

No sales were made to the potential customers at the meetings. No purchase orders were signed, no SunSetTM xDSL test sets were left with the potential customers, and no consideration was exchanged at the meetings. In the meetings, no firm prices were discussed. No firm quantities were discussed. No firm delivery dates were discussed. I believed then and believe now that nothing was discussed that would have led the potential customers to believe that they could have formed a binding contract with Sunrise by simple acceptance. I did not invite the potential customers to make any offers themselves for the xDSL Test Sets. Even if a potential customer had made an offer to buy (which they did not), I would have been unable to accept the offer. The SunSetTM xDSL test set was still under continuing development over the time period of these meetings.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: Mar 3 2004


Paul Marshall